

**IN THE  
SUPREME COURT  
OF THE UNITED STATES**

Supreme Court, U.S.  
FILED  
MAY 27 1977  
MICHAEL RODAK, JR., CLERK

October Term, 1976

Case No.

76-1674

NORMAN STEPHENSON,  
STEPHENSON ENTERPRISES,  
INC., a corporation, and  
LAKE BUTLER APPAREL  
COMPANY, a Florida corporation,

Appellants,

-v-

DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES, STATE  
OF FLORIDA,

Appellee.

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**ON APPEAL FROM  
THE SUPREME COURT OF THE STATE OF FLORIDA**

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**JURISDICTIONAL STATEMENT**

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**IN THE  
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NORMAN STEPHENSON,  
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Appellee.

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**ON APPEAL FROM  
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**JURISDICTIONAL STATEMENT**

Appellants appeal from the Final Judgment and Opinion of the Supreme Court of the State of Florida entered on November 30, 1976 and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

### CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported in 342 So.2d 60 and is printed in the Appendix at page A. 12. The Final Judgment and Opinion of the District Court of Appeal, First District, State of Florida, is reported at 329 So.2d 373 and reprinted in the Appendix at page A. 5. The final decision and Order of the trial court, the Circuit Court of the Eighth Judicial Circuit in and for Baker County, Florida, is unreported and is reprinted in the Appendix at page A. 1.

### JURISDICTION

The Final Judgment and Opinion of the Supreme Court of Florida was entered on November 30, 1976. A. 12. A timely Petition for Rehearing was denied on February 28, 1977. A. 18. The Final Decision and Order of the Supreme Court of Florida upheld the constitutional validity of Section 570.15, Florida Statutes (1975), against contentions that the statute was repugnant to the United States Constitution, Amendments IV and XIV.

Notice of Appeal from the Decision and Order of the Supreme Court of Florida was filed in the Supreme Court of Florida on March 7, 1977. A. 19. The Supreme Court of the United States has jurisdiction to review, by direct appeal, the Final Judgment and Decision of the Supreme Court of Florida pursuant to 28 U.S.C. §§1257(2), 2101(c). The following decisions are believed to sustain the jurisdiction of the Supreme Court of the United States to review the judgment on appeal in this case. See, e.g., *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975); *Cohen v. California*, 403 U.S. 15 (1971).

### STATUTES INVOLVED

The statutes of the State of Florida that are involved are §§570.15 and 570.44(3), Florida Statutes, which established the Department of Agriculture and Consumer Services for the State of Florida. Section 570.15, Florida Statutes (as amended, 1975), reads as follows:

"570.15 Access to places of business and vehicles

"(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers of the department shall have full access at all reasonable hours to all:

1. Places of business;
2. Factories;
3. Farm buildings;
4. Carriages;
5. Railroad cars;
6. Trucks;
7. Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag;
8. Truck and motor vehicle trailers;
9. Vessels; and
10. All records pertaining thereto;

used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.



"(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s.933.19.

"(c) Such departmental officers, employees, and road-guard inspection special officers may examine and open any package or container of any kind containing or believed to contain any article or product which may be transported, manufactured, sold, or exposed for sale in violation of the provisions of this chapter, the rules of the department, or the laws which the department enforces and may inspect the contents thereof and take therefrom samples for analysis.

"(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083." Florida Statutes §570.15.

Section 570.44(3), Florida Statutes, sets forth the powers and duties of the Department of Agriculture's inspection division and reads as follows:

"570.44(3) Road guards.—It shall be the duty of this section to operate and manage those road guard inspection stations of the state and to perform the

general inspection activities relating to the movement of agricultural, horticultural and livestock products and commodities as directed by the commissioner and the division director."

The Supreme Court of Florida held that the operation of Florida Statutes §570.15, when construed in conjunction with Florida Statutes §570.44(3), did not deprive Appellants of their right to be free from unreasonable searches and seizures, their right to due process of law, and their right to privacy and to travel freely on the highways of the United States as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

### QUESTIONS PRESENTED

Section 570.15, Florida Statutes, provides for the compulsory stopping and inspection of all trucks and trailers and a broad class of other commercial vehicles. The statute further provides that if the operator of any truck or any motor vehicle trailer passes an official Department of Agriculture road-guard inspection station without first stopping for inspection, the operator may be found guilty of a criminal misdemeanor. The principal questions presented are: (1) whether these statutory provisions are unconstitutional in that they provide for the indiscriminate stopping of all trucks and trailers and other commercial motor vehicles on the highways of the State of Florida for agricultural inspection purposes regardless of whether there is probable cause, or even mere suspicion, to believe that the vehicles are involved in transporting agricultural products, and (2) whether the statute in question, facially and as applied to Appellants is repugnant to Appellants' right to be free from unreasonable search and seizure, their right to due process and equal protection of the law, their right

to privacy and the right to travel freely on the highways of the United States as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

### STATEMENT OF THE CASE

Stephenson Enterprises, Inc. and Lake Butler Apparel Company are clothing manufacturers. Stephenson Enterprises, Inc. is located in Folkston, Georgia, while Lake Butler Apparel Company is located in Lake Butler, Florida. The Appellant, Norman Stephenson, is a principal officer in both companies. The geographical proximity between the two manufacturing operations located in Georgia and Florida, respectively, necessitates frequent passage of Florida Department of Agriculture road-guard inspection stations. These road-guard inspection stations are established pursuant to Fla.Stat. §§570.15 and 570.44(3) for the purpose of stopping and inspecting all trucks and trailers and other commercial vehicles to determine whether agricultural, horticultural and livestock products are being transported and if so whether such products are in compliance with various state and federal laws and marketing orders. See Fla.Stat. Chapters 601 and 603. In addition to road-guard stations located at fixed points, the Florida Department of Agriculture also utilizes roving patrol guards who selectively stop the motoring public traveling on highways where road-guard inspection stations are not located.

During frequent trips between their respective Florida and Georgia manufacturing sites, Appellants have been stopped, arrested and subjected to humiliation for refusing to consent to compulsory stoppings and detentions at Florida's Department of Agriculture road-guard inspection stations. At no time were Appellants' vehicles carrying any agricultural products or any other products regulated by the De-

partment of Agriculture and Consumer Services. The only items ever transported in Appellants' vehicles were clothing apparel and textiles. On one occasion, Norman Stephenson was charged with interfering with a Department of Agriculture employee for refusing to stop at a road-guard station maintained by the Florida Department of Agriculture. See Fla.Stat. §570.16.<sup>1/</sup> Prior to his arrest, he had been stopped by a roving patrol guard who noted that Appellants' truck was loaded with "something."

Some vehicles are permitted to pass the Department of Agriculture's road-guard inspection stations without stopping for inspection. Appellants, on the other hand, were frequently forced to stop their vehicles for inspection at the Macclenny, Baker County, Florida station. Appellants were not forced to stop at other Department of Agriculture road-guard inspection stations.

#### A. Trial Court Proceedings

In response to these indiscriminate stoppings of Appellants' vehicles by the Florida Department of Agriculture, Appellants filed a complaint for declaratory judgment and injunction against the Department of Agriculture and Consumer Services, State of Florida, in the Eighth Judicial Circuit Court in and for Baker County, Florida. In their complaint, Appellants sought a declaration of their constitutional rights and the purported statutory and constitutional authority of the Department of Agriculture to compel Appellants' vehicles to stop, without probable cause or any arrest or search warrant, for inspections at Department of Agriculture road-guard stations. Appellants contended in

<sup>1/</sup> The criminal charges were later dismissed during the pendency of this case in the Baker County Circuit Court.



the trial court that the Department of Agriculture had no statutory authority to require Appellants' vehicles to stop for inspection at the road-guard stations and that the Department's attempts to compel Appellants' vehicles to stop for inspection violated Appellants' constitutional rights of due process of law, equal protection of the law, and the right to be free from unreasonable searches and seizures, the right to privacy and the right to travel freely on the highways of the United States as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

Appellants filed a Motion for Summary Judgment in the Baker County Circuit Court on February 20, 1974. The trial court entered its order denying Appellants' Motion for Summary Judgment on April 23, 1974. A. 1. The trial court held that the Department of Agriculture had both constitutional and statutory authority under Florida Statutes §§570.15 and 570.44(3) to require all trucks operating on public highways to stop for inspection to initially ascertain what was being transported. The trial court further held that the statutory scheme for stopping and inspecting was a valid exercise of the State's police power and was not repugnant to either state or federal constitutional provisions.

#### **B. Attempted Direct Appeal to the Supreme Court of Florida**

Appellants timely filed a Notice of Direct Appeal from the trial court's order denying the Motion for Summary Judgment to the Supreme Court of the State of Florida. That Court subsequently entered an order dated May 7, 1975, transferring the case to the District Court of Appeal, First District, State of Florida.

#### **C. Proceedings Before the District Court of Appeal, First District, State of Florida**

After the case had been transferred by the Supreme Court of Florida to the First District Court of Appeal, and before any decision was rendered by the District Court of Appeal, Section 570.15, Florida Statutes, was amended by the Florida Legislature. See Fla.Stat. §570.15 (July 1, 1975). Before the statute was amended, there were no specific criminal prohibitions against a vehicle operator's refusal to stop for inspections at Department of Agriculture road-guard stations. *But see*, §570.16, Fla.Stat. (1974).

The amended version of Florida Statutes §570.15 gave the Department of Agriculture explicit statutory authority to require certain classes of motor vehicles used in the production, transportation, or manufacture of products regulated by the Department to stop at all road-guard stations. A refusal to stop by any truck or trailer operator after July 1, 1975, was made a criminal misdemeanor.

The District Court held that the operation of the amended statute facially and as it might be prospectively applied to Appellants did not deprive them of their right to be free from unreasonable searches and seizures, their right to due process of law, their right to equal protection of the law, their right to privacy and their right to travel freely on the highways of the United States as guaranteed by both the federal and state Constitutions. See 329 So.2d at 376, A. 9. The District Court also concluded that the stopping of Appellants' vehicles and all other trucks and trailers for the purpose of inspection, without a warrant and without probable cause to believe that any violation of the law had been committed, was not a search and not an unreasonable seizure prohibited by the Fourth Amendment to the United



States Constitution. 329 So.2d at 377; A. 11. The statutory requirement that all trucks and trailers stop at inspection stations for agricultural inspections was held to constitute a reasonable and valid exercise of the State's police power. 329 So.2d at 376; A. 11.

#### D. Proceedings Before the Supreme Court of Florida

Appellants thereafter timely appealed the decision of the District Court of Appeal, First District, to the Supreme Court of Florida. The Decision and Order of the District Court of Appeal was affirmed by the Supreme Court of Florida on November 30, 1976. 342 So.2d 60; A. 12. The Supreme Court of Florida also held that §570.15, Fla.Stat. (1975), was constitutional and did not deprive Appellants of their right to be free from unreasonable searches and seizures, the right to due process of law and equal protection of the law, and the right to privacy and to travel freely on the highways of the United States as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and similar provisions of the Florida Constitution. 342 So.2d 60; A. 15. The Supreme Court of Florida further held that §570.15, Fla.Stat., gave the Department of Agriculture statutory authority to require all trucks and trailers to stop at agricultural inspection stations for purposes of inspection regardless of whether such trucks and trailers were used in the production, manufacture, storage, sale or transportation of any article or product regulated by the Department of Agriculture.

Appellants timely filed a Petition for Rehearing in the Supreme Court of Florida. The Petition for Rehearing was denied on February 28, 1977. A. 18. Appellants thereafter timely filed on March 7, 1977, a Notice of Appeal seeking review in this Court of the Supreme Court of Florida's final Decision and Order.

### THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

#### A. Constitutional Questions Arising Under the Fourth and Fourteenth Amendments

The decision of the Supreme Court of Florida dilutes the safeguards imposed by the Fourth and Fourteenth Amendments to the United States Constitution on search and seizure powers exercised by State agricultural inspectors. The Fourth and Fourteenth Amendment constitutional safeguards were designed to prevent arbitrary and oppressive interference by law enforcement officials with the privacy and personal security of individuals. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973); *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967); *See v. Seattle*, 387 U.S. 541 (1967). The Court below has construed §570.15, Fla. Stat. in conjunction with §570.44(3), Fla.Stat., to permit the indiscriminate stopping of all trucks, trailers and motor vehicles, except private passenger automobiles without trailers in tow and recreational vehicles, for purposes of agricultural inspection irrespective of whether such vehicles are transporting agricultural products. These stoppings and inspections are carried out at both fixed locations and by roving patrol inspectors.<sup>2/</sup> See, *Almeida-Sanchez v. United States*, *supra*. They are carried out without probable cause or even suspicion to believe that the vehicles stopped are violating any law or are being used in the transportation of products regulated by the Department of Agriculture. *C.f.*, *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

<sup>2/</sup> Once a vehicle is stopped, if the operator refuses to consent to an inspection, he is detained while a search warrant is sought by the road-guard inspector. Fla.Stat. §§570.15(1)(b), (2), 570.151.

The motoring public should harbor a reasonable expectation of privacy and freedom from unreasonable governmental interference when traveling on the interstate highways of the nation. See *Carroll v. United States*, 267 U.S. 132 (1925). Compulsory stopping and inspecting of motor vehicles is a seizure of the automobile and its occupants. See *Terry v. Ohio*, 392 U.S. 1 (1968).

This Court has recently defined the constitutional limitations governing border patrol stoppings to deter the influx of illegal aliens at fixed checkpoints along international borders. See *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). In *Martinez-Fuerte*, the Court held that motor vehicles may be stopped at fixed checkpoints for brief questioning of its occupants even though there is no reason to believe the particular vehicles contain illegal aliens and that such stops are consistent with the Fourth Amendment to the United States Constitution. The Court in *Martinez-Fuerte*, *supra*, noted that "... interdicting the flow of illegal entrants from Mexico poses formidable law enforcement problems. The principal problem arises from surreptitious entries . . ." 428 U.S. at 552. The holding in that case was expressly limited to fixed point international border stops to deter illegal immigration. Florida's Department of Agriculture stoppings and inspections are conducted at both fixed point road-guard stations and by roving patrol guards.

The State of Florida's interest involved in the case at bar can scarcely be equated with the protections against unreasonable and arbitrary interference with the motoring public which are at stake and which are protected by the Fourth and Fourteenth Amendments. While the flow of illegal immigrants into the United States has long been recognized as a serious national problem,<sup>3/</sup> the State of Florida's need

<sup>3/</sup> See *United States v. Martinez-Fuerte*, *supra*; *Border Crisis - Illegal Aliens Out of Control?*, U.S. News & World Report at p. 33 (April 25, 1977).

to stop all trucks and trailers for conducting agricultural inspections is circumspect, and more importantly, constitutes a dragnet search and seizure of a substantial segment of the motoring public. This court has long recognized that "spot checking" or indiscriminate stopping of all vehicles on the public highways is not tolerable under the Fourth Amendment. In *Carroll*, the Court noted:

"It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. But those lawfully within this country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise." (Citations omitted.) *Carroll v. United States*, 267 U.S. at 154.

More is involved here than the rights of the parties litigant. The motoring public has an important stake in the outcome. No means now exist to protect the motoring public from unreasonable stoppings and inspections by Florida Department of Agriculture road-guard inspectors. Motorists who refuse to stop for such inspections run the risk of criminal sanctions under the statutory scheme held to be constitutional by the Supreme Court of Florida. There is no emergency situation which would authorize the indiscriminate stopping of vehicles on interstate highways leading into and through the State of Florida. The agricultural



stopplings and inspections are used on the chance of finding some violation of the law without any reasonable suspicion or probable cause to believe that any law has been violated. The motoring public's right to be free from unbridled discretion and arbitrary authority and to travel freely on the highways of the United States involve constitutional implications of the highest magnitude under the Fourth and Fourteenth Amendments.

The constitutional issues at stake here were left open for future decision by this Court in *United States v. Martinez-Fuerte*, 428 U.S. at 560, N.14. This Court has jurisdiction to review the case on appeal since Florida's statutory scheme for conducting inspections and stopping the motoring public within its borders has been sustained against the contention that it is repugnant to the Fourth and Fourteenth Amendments to the United States Constitution. See 28 U.S.C. §1257(2); *Cox Broadcasting Corp. v. Cohn*, *supra*.

### CONCLUSION

The decision of the Court below sustaining the validity of Florida's agricultural inspection scheme presents constitutional questions that go to the heart of the Fourth and Fourteenth Amendment limitations on search and seizure powers. These questions are so substantial that they require plenary consideration with briefs and oral argument for their resolution.

For these and the foregoing reasons, Appellants respectfully suggest that the Court enter its order noting probable jurisdiction and reversing the decision of the Supreme Court of Florida.

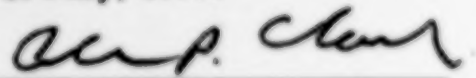
Respectfully submitted,

CAVEN & CLARK, P.A.

By   
Allan P. Clark

### CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing have been furnished to Robert A. Chastain, General Counsel, State of Florida, Department of Agriculture and Consumer Services, and to Leslie McLeod, Jr., Esquire, Resident Counsel, State of Florida, Department of Agriculture and Consumer Services, 515 Mayo Building, Tallahassee, Florida 32304, by mail this 26 day of May, 1977.

  
Attorney



## **APPENDIX**

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A-1

IN THE CIRCUIT COURT OF THE  
EIGHTH JUDICIAL CIRCUIT, IN  
AND FOR BAKER COUNTY, FLORIDA  
CASE NO. 73-147

NORMAN STEPHENSON, LAKE  
BUTLER APPAREL COMPANY,  
a corporation, and STEPHENSON  
ENTERPRISES, INC., a corporation,  
Plaintiffs,

vs.

DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES, STATE  
OF FLORIDA,  
Defendant.

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**ORDER DENYING SUMMARY JUDGMENT**

Plaintiffs primarily contend in their Complaint and Motion for Summary Judgment that since their trucks are never used to transport agricultural products the Defendant unit of the State of Florida is without statutory authority to either stop their vehicles on the public highways, or to require them to stop at Defendant's road guard stations for inspection. They further contend that Defendant's conduct in this respect is arbitrary and discriminatory and violates their constitutional rights of due process, equal protection of the laws, right to be free from unreasonable searches, their right to privacy, and the right to travel freely.

The Plaintiffs are so outraged at the conduct complained of that they plead and the evidence shows that they refuse



to stop for inspection notwithstanding uniformed officers in marked automobiles, and well placed signs advising truck drivers to stop at guard stations.

There are two pertinent statutes, the construction of which, is necessary for a determination of the issues involved. Section 570.15, F.S. reads in part as follows:

570.15 "Access to place of business. The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents and other employees and officers of the department *shall have full access at all reasonable hours to all places of business, factories, farm buildings, carriages, railroad cars, motor vehicles and vessels used in the production, manufacture, storage, sales or transportation within the state of any food product or agricultural product or any article or product with respect of which any authority is conferred by law on the department and all records pertaining thereto . . .*" (Emphasis supplied)

The salient provision of this statute authorizes officers of the department to have full access to motor vehicles used in the transportation of an agricultural product.

Section 570.44(3), F.S. entitled "Division of Inspection; Powers and Duties; (3) Road Guards" provides:

"It shall be the duty of this section to operate and manage those roadguard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural and livestock products and commodities as directed by the commissioner and the divisional director."

Inspection laws are regulations designed to promote the

public health, safety and welfare in order to determine whether there has been compliance with prescribed standards.

Subject to the paramount right of Congress to regulate commerce with foreign nations and among the states under Article 1, Section 10, Clause 2, of the United States Constitution, a state has the right to enact inspection laws under its police power. 17 FLA. JUR., INSPECTION LAWS, §2.

In *Johnson v. State*, 128 So. 853 (Fla. 1930), the Supreme Court of Florida upheld the constitutionality of the citrus inspection code saying on page 857:

"The protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the state is affected to such an extent by public interest as to be within the police power of the sovereign."

There has been no showing that Plaintiffs have been treated or subjected to any measure or procedure differently from anyone else operating a truck on the public highways of this state, or when driving a truck up to and passing an inspection station.

There has been some indication that one may qualify for a permit to avoid the onerous result of being stopped or having to stop at a station, but that is not an issue as neither of the Plaintiffs has applied for such safe passport.

Plaintiffs' argument and testimony that they never transport an agricultural product begs the question. The officers are charged by the law and the regulations adopted pursuant to the code to satisfy themselves that this is true. See Section 570.48, Florida Statutes.

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It would be a strange anomaly if one could avoid being inspected or even stopped for inquiry as to what he was hauling by the expedient of an injunction predicated upon his oath that he never had and did not intend to transport agricultural products.

This would defeat the uniformity of the operation of the inspection law which is an essential requisite, and would result in unreasonable discrimination and would itself render the statute invalid. 17 FLA. JUR., INSPECTION LAWS, §3.

The Defendant's actions to ascertain what Plaintiffs are transporting have been reasonable, and no abuse of its discretion has been shown.

It is within the police powers of the state to cause to stop for inspection all trucks operating on the public highways.

Accordingly, it is

ORDERED AND ADJUDGED that the Motion for Summary Judgment is and the same is hereby denied, and the injunctive relief sought by Plaintiffs is denied.

DONE AND ORDERED in Chambers at Gainesville, Alachua County, Florida, this 22nd day of April, A.D., 1974.

/s/ John J. Crews

\_\_\_\_\_  
JOHN J. CREWS, Circuit Judge

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A-5

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA  
JANUARY TERM, A.D. 1976.

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING PETITION  
AND DISPOSITION THEREOF IF  
FILED.

CASE NO. Y-320

NORMAN STEPHENSON,  
LAKE BUTLER APPAREL  
COMPANY, et al,

Appellants,

vs.

DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES, STATE  
OF FLORIDA,

Appellee.

\_\_\_\_\_  
Opinion filed March 30, 1976.

An Appeal from the Circuit Court for Baker County.  
John J. Crews, Judge.

Charles C. Adams, for Appellants.

Robert A. Chastain and Leslie McLeod, Jr., for Appellee.

McCord, J., Acting Chief Judge,

This is an appeal from an order denying appellants' motion for summary judgment and injunctive relief. The appeal was taken to the Supreme Court of Florida and was transferred by that court to this court, the Supreme Court finding that the issues involved are matters within the jurisdiction of this court.

By their complaint, appellants contended in the trial court that appellee, the Department of Agriculture and Consumer Services of the State of Florida, was without statutory or constitutional authority to require their trucks to stop at appellee's road-guard stations for agricultural inspection, alleging their trucks do not carry agricultural products. They sought an injunction to prevent appellee from requiring their trucks to stop. The trial judge, in his order denying appellants' motion for summary judgment, pointed out that the Supreme Court of Florida in *Johnson v. State*, Fla. 128 So. 853 (1930), upheld the constitutionality of the citrus inspection code saying:

"The protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the state is affected to such an extent by public interest as to be within the police power of the sovereign."

The trial court then found that the appellee's actions to ascertain what agricultural products, if any, appellants are transporting have been reasonable and no abuse of discretion has been shown. The trial court further pointed out that the agricultural inspection laws are "regulations designed to promote the public health, safety and welfare in order to determine whether there has been compliance with prescribed standards." The court made the further affirmative finding:

"It is within the police powers of the state to cause to stop for inspection all trucks operating on the public highways."

The statutes which purportedly authorized appellee to require appellants' trucks to stop for agricultural inspection are Sections 570.15 and 570.44(3), Florida Statutes. Subsequent to the entry of the trial court's order appealed from, Section 570.15, Florida Statutes, was amended. This being a suit in which appellants seek prospective relief, we will consider the law as it exists at this time rather than as it existed at the time of the entry of the order appealed from. See *Florida East Coast Railway Company v. Rouse*, Fla., 194 So.2d 260 (1967); *Phillips v. Phillips*, Fla.App. (1st), 287 So.2d 149 (1973).

§570.44(3), Florida Statutes, relating to the powers and duties of appellee's Division of Inspection, provides as follows:

"BUREAU OF ROAD GUARDS.—It shall be the duty of this bureau to operate and manage those road guard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural, and livestock products and commodities as directed by the department and the division director."

§570.15, Florida Statutes, 1975, provides in pertinent part as follows:

"(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers at the department shall have full access at all reasonable hours to all:



1. \*\*\*
2. \*\*\*
3. \*\*\*
4. \*\*\*
5. \*\*\*
6. Trucks;
7. Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag;
8. Truck and motor vehicle trailers;
9. \*\*\*
10. All records pertaining thereto;

used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.

(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s.993.19.

(c) \*\*\*

(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road-guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

Appellants' affidavit in support of their motion for summary judgment stated that their trucks are used to transport apparel, textiles and items related to the manufacture of

clothing; that the trucks are never used to transport agricultural, horticultural, or livestock products or other products regulated by appellee. Appellants contend that to require their trucks to stop for inspection at appellee's inspection stations is a deprivation of appellants' right to be free from unreasonable searches and seizures, their right to due process of law, their right to equal protection of the law, their right to privacy and to travel freely on the highways of the United States, as guaranteed by the United States Constitution and the Constitution of Florida. We disagree.

Appellee has full authority under the police power of the State of Florida to conduct agricultural inspections of the vehicles mentioned in the above statutes provided such inspections are made pursuant to the terms of said statutes. The inspections are necessary in order that appellee may carry out its responsibilities relating to disease control, fruit and vegetable grading and other similar matters required by law, appellee's regulations and federal marketing orders. Under subsection (2) of section 570.15 above, all trucks and motor vehicle trailers [not limited to those mentioned in subsection (1)] are required to stop at appellee's road-guard inspection stations for inspections. Unless such a vehicle stops at the station, it cannot be determined by the inspectors whether or not it is being used for transportation of "any food product, any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department." Upon stopping, the majority of operators of such vehicles will probably have no objection to such an inspection and will consent to same; but as provided in the statute, if access is refused, the vehicle may not be searched without the inspector obtaining a search warrant or without a legal basis for search without a warrant pursuant to established law. Such in no way impairs appellants' right to be free from unreason-

able search and seizure, their right to due process of law, or their right to equal protection of the law. We do not find that it violates any constitutional right of appellant.

From the record it appears that appellee has a procedure whereby a concern may qualify for a permit through which its trucks, upon stopping, will be given clearance through exhibiting their bills of lading, but appellants have not sought to avail themselves of this procedure.

We have considered the opinion of the United States Court of Appeals, Ninth Circuit, in *United States v. Martinez-Fuerte*, 514 F.2d 308 (1975), which holds that federal immigration agents cannot constitutionally stop automobiles on the chance of discovering something illegal; that such is a violation of the Fourth Amendment of the Constitution of the United States. Also, in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the Supreme Court said:

"It is quite plain that the Fourth Amendment governs 'seizures' of the person which do not eventuate in a trip to the station house and prosecution for crime--'arrests' in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."

There the court went on to hold that due regard for the practical necessities of law enforcement justifies something less than probable cause for brief informal detention and ruled that a "founded suspicion" is all that is necessary.

As stated by the District Court of Appeal, Fourth District, in *Gustafson v. State*, Fla.App., 243 So.2d 615; reversed on other grounds, *State v. Gustafson*, Fla., 258 So.

2d 1 (1972); Aff., 414 U.S. 260, 38 L.Ed.2d 456, 94 S.Ct. 488 (1973):

"Florida courts have recognized use of detentions which fall short of technical arrests. *Chance v. State*, Fla. App. 1967, 202 So.2d 825 (investigation of a liquor store robbery); *Lowe v. State*, Fla.App. 1966, 191 So.2d 303 (investigation of robbery suspects). A license check evidently falls into this category. *City of Miami v. Aronovitz*, Fla. 1959, 114 So.2d 784."

The foregoing cases, with the exception of those relating to drivers' license checks, all dealt with criminal investigations. The inspections authorized by statute in the case sub judice fall in a different category. Agricultural inspections appear to be more nearly akin to drivers' license checks than detentions for criminal investigations, but we have found no authority and none has been cited to us dealing with agricultural inspections of motor vehicles.

It is our view that the requirement of the foregoing statute that all trucks and trailers stop at the inspection stations of appellee for agricultural inspection is entirely reasonable and is a valid exercise of the police power of the state. The stopping of a vehicle for such purpose is not a search and is not an *unreasonable seizure*. Only unreasonable searches and seizures are prohibited by the Fourth Amendment.

Affirmed.  
SMITH and MILLS, JJ., CONCUR.



IN THE SUPREME COURT OF FLORIDA  
JULY TERM, A.D. 1976

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING PETITION  
AND, IF FILED, DETERMINED

CASE NO. 49,305

DCA CASE NO. Y-320

NORMAN STEPHENSON,  
LAKE BUTLER APPAREL  
COMPANY, a corporation,  
and STEPHENSON ENTERPRISES,  
INC., a corporation,

Appellants,

-v-

DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES, STATE  
OF FLORIDA,

Appellee.

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Opinion filed November 30, 1976

An Appeal from the District Court of Appeal, First District  
Allan P. Clark of Caven and Clark, for Appellants  
Robert A. Chastain and Leslie McLeod, Jr., for Appellee

ROBERTS, J.

We have for review by direct appeal the decision of the  
District Court of Appeal, First District, in Stephenson, et

al. v. Department of Agriculture and Consumer Services  
reported at 329 So.2d 373, which passes on the constitu-  
tional validity of Section 570.15, Florida Statutes (1975),  
thereby vesting jurisdiction in this Court pursuant to Arti-  
cle V, Section 3(b)(1), Florida Constitution.

The decision of the District Court under review succinctly  
states the pertinent facts relative to this appeal. "By their  
complaint, appellants contend in the trial court that appel-  
lee, the Department of Agriculture and Consumer Services  
of the State of Florida, was without statutory or constitu-  
tional authority to require their trucks to stop at appel-  
lee's road-guard stations for agricultural inspection, alleg-  
ing their trucks do not carry agricultural products. They  
sought an injunction to prevent appellee from requiring  
their trucks to stop. The trial judge, in his order denying  
appellants' motion for summary judgment, pointed out  
that the Supreme Court of Florida in *Johnson v. State*, Fla.  
128 So. 853 (1930), upheld the constitutionality of the cit-  
rus inspection code saying:

The protection of a large industry constituting  
one of the great sources of the state's wealth and  
therefore directly or indirectly affecting the wel-  
fare of so great a portion of the population of the  
state is affected to such an extent by public interest  
as to be within the police power of the sovereign.'

"The trial court then found that the appellee's actions to  
ascertain what agricultural products, if any, appellants are  
transporting have been reasonable and no abuse of discre-  
tion has been shown. The trial court further pointed out  
that the agricultural inspection laws are 'regulations designed  
to promote the public health, safety and welfare in order  
to determine whether there has been compliance with pre-  
scribed standards.' The court made the further affirmative  
finding:



'It is within the police power of the state to cause to stop for inspection all trucks operating on the public highways.' "

The statutes under consideration authorizing appellee to require appellants' trucks to stop for agricultural inspections are Sections 570.15 (which was amended after the trial court's order) and 570.44(3), Florida Statutes. Since appellants sought prospective relief by their action for declaratory judgment, the District Court of Appeal, First District, considered the law as it existed at the time of the appeal rather than at the time of the entry of the order appealed.

The subject statutory provisions provide:

"570.44(3) BUREAU OF ROAD GUARDS.—It shall be the duty of this bureau to operate and manage those road guard inspection stations of the state and to perform the general inspection activities relating to the movement of agricultural, horticultural, and livestock products and commodities as directed by the department and the division director.

"570.15 Access to places of business and vehicles.

"(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers at the department shall have full access at all reasonable hours to all:

1. \* \* \*
2. \* \* \*
3. \* \* \*
4. \* \* \*
5. \* \* \*
6. Trucks;

7. Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag;

8. Truck and motor vehicle trailers;

9. \* \* \*

10. All records pertaining thereto; used in the production, manufacture, storage, sale or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.

(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s. 933.19.

(c) \* \* \*

(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road-guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

Affirming the trial court, the District Court of Appeal opined, and we agree:

"Appellee has full authority under the police power of the State of Florida to conduct agricultural inspections of the vehicles mentioned in the above statutes provided such inspections are made pursuant to the terms of said statutes. The inspections are necessary in order that appellee may carry

out its responsibilities relating to disease control, fruit and vegetable grading and other similar matters required by law, appellee's regulations and federal marketing orders. Under subsection (2) of section 570.15 above, all trucks and motor vehicle trailers [not limited to those mentioned in subsection (1)] are required to stop at appellee's road-guard inspection stations for inspection. Unless such a vehicle stops at the station, it cannot be determined by the inspectors whether or not it is being used for transportation of 'any food product, any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.' Upon stopping, the majority of operators of such vehicles will probably have no objection to such an inspection and will consent to same; but as provided in the statute, if access is refused, the vehicle may not be searched without the inspector obtaining a search warrant or without a legal basis for search without a warrant pursuant to established law. Such in no way impairs appellants' right to be free from unreasonable search and seizure, their right to due process of law, or their right to equal protection of the law. We do not find that it violates any constitutional right of appellant.

"From the record it appears that appellee has a procedure whereby a concern may qualify for a permit through which its trucks, upon stopping, will be given clearance through exhibiting their bills of lading, but appellants have not sought to avail themselves of this procedure.

\* \* \* \* \*

"The inspections authorized by statute in the case sub judice fall in a different category. Agricultural inspections appear to be more nearly akin to drivers' license checks than detentions for criminal investi-

gations, but we have found no authority and none has been cited to us dealing with agricultural inspections of motor vehicles.

"It is our view that the requirement of the foregoing statute that all trucks and trailers stop at the inspection stations of appellee for agricultural inspection is entirely reasonable and is a valid exercise of the police power of the state. The stopping of a vehicle for such purpose is not a search and is not an *unreasonable* seizure. Only unreasonable searches and seizures are prohibited by the Fourth Amendment."

Accordingly, the decision of the District Court of Appeal, First District, is hereby affirmed.

It is so ordered.  
OVERTON, C.J., ADKINS, BOYD, ENGLAND and  
SUNDBERG, JJ., Concur  
HATCHETT, J., Concurs in result only, with concurring  
opinion

HATCHETT, J., concurring

I concur on the authority of *United States v. Martinez-Fuerte*, \_\_\_\_\_ U.S. \_\_\_\_\_, 49 L.Ed.2d 1116, \_\_\_\_\_ S.Ct. \_\_\_\_\_ (1976).

A-18

IN THE SUPREME COURT OF FLORIDA  
MONDAY, FEBRUARY 28, 1977

CASE NO. 49,305

DCA CASE NO. Y-320

NORMAN STEPHENSON, LAKE  
BUTLER APPAREL COMPANY,  
a corporation, and  
STEPHENSON ENTERPRISES, INC.,  
a corporation,

Appellants,

vs.

DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES, STATE  
OF FLORIDA,

Appellee.

On consideration of the petition for rehearing filed by  
attorneys for appellants,

IT IS ORDERED by the Court that said petition be and  
the same is hereby denied.

A True Copy

TEST:

Sid J. White  
Clerk Supreme Court

A-19

By: /s/ Debbie Causseaux  
Deputy Clerk

cc: Hon. Raymond E. Rhodes, Clerk  
Hon. Joe Dobson, Clerk  
Hon. John J. Crews, Chief Judge

Hon. Allan P. Clark  
of Caven & Clark  
Hon. Robert A. Chastain and  
Hon. Leslie McLeod, Jr.

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IN THE SUPREME COURT  
STATE OF FLORIDA

Case No. 49,305

NORMAN STEPHENSON, LAKE  
BUTLER APPAREL COMPANY,  
et al.,

Appellants,

-v-

DEPARTMENT OF AGRICULTURE  
AND CONSUMER SERVICES, STATE  
OF FLORIDA,

Appellee.



**NOTICE OF APPEAL TO THE  
SUPREME COURT OF THE UNITED STATES**

Notice is hereby given that Norman Stephenson, Lake Butler Apparel Company, a corporation, and Stephenson Enterprises, Inc., a corporation, the Appellants named above, hereby appeal to the Supreme Court of the United States from the final judgment and opinion affirming the Decision and Order of the District Court of Appeal, First District, entered in this action on November 30, 1976. Appellants' timely Motion for Rehearing was denied by Order entered in this action on February 28, 1977.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

**CAVEN & CLARK, P.A.**

By /s/ Allan P. Clark  
1216 Atlantic National Bank Building  
Jacksonville, Florida 32202  
Attorneys for Appellants